Filed 1/14/16 In re D.P. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.P. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. M.P., Defendant and Appellant.	E063040 (Super.Ct.No. SWJ1400881) OPINION

APPEAL from the Superior Court of Riverside County. Timothy F. Freer, Judge. Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Based on jurisdictional findings of failure to supervise, neglect, and unresolved mental health issues, the juvenile court declared D.P. and N.P. dependents of the court under Welfare and Institutions Code section 300, subdivision (b)[1] and removed them from their mother's care under section 361, subdivision (c)(1). On appeal, defendant and appellant, M.P. (mother), contends there was insufficient evidence to support the jurisdictional findings and the dispositional order relating to D.P.[2] For the reasons stated *post*, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

A. *Detention*

Mother has two children. Her son, D.P., was two years old at the time of the dependency petition and her daughter, N.P., was four months old. The children came to the attention of plaintiff and respondent, Riverside County Department of Public Social Services (DPSS), when the police responded to mother's apartment complex after a neighbor found D.P. wandering barefoot in the parking lot, trying to open car doors.

---

[1] All further unlabeled statutory references are to the Welfare and Institutions Code.

[2] Mother does not challenge jurisdiction or disposition as they relate to N.P. N.P.'s biological father, M.T., was given family reunification services. He also does not challenge any of the court's rulings.

The neighbor called the police around 1:30 p.m. on November 9, 2014, to report the unsupervised child. The officer who responded to the scene began knocking on doors in the apartment complex, looking for the child's guardian. About an hour later, mother realized D.P. was missing and contacted the police.

Mother told the officer she suffers from a depression disorder that is "debilitating if she does not take medication" and from insomnia such that she "cannot go to sleep without a sleeping pill." Mother forgot to take her medication the previous evening because she had stayed up the entire night working on a research paper. She took her medication around 8:00 that morning and soon afterward "inadvertently" fell asleep in her bedroom with D.P. Her bedroom door was closed, but she left her window open. When she woke up at about 2:30 p.m., D.P. was not in the room and the window screen had been torn open.

The officer inspected mother's living conditions and found her apartment in "disarray." He contacted DPSS and requested that a social worker visit the apartment. When the social worker arrived for a home assessment and interview, the police officer heard her express concern that mother was "overwhelmed" and heard mother reply, "I probably am."

In the detention report, the social worker noted mother's apartment was "dirty" and lacking in adequate food supplies. The carpet was blackened and littered with food particles, bags, and various other items. Mother's bedroom was clean, but the children's

bedroom was in "complete disarray" with toys and child care items "littered all over the floor, as though the room is never cleaned." There was very little food in the kitchen, but there were opened alcoholic beverages on the shelves. There was not enough formula left in the canister to make a single bottle. Mother retrieved from her car a sandwich bag of "emergency" supply, which contained enough formula to make one and a half bottles. Mother said she had planned to pick up more formula before the incident occurred.

Mother told the social worker that she had been diagnosed with depression, Attention Deficit Hyperactivity Disorder (ADHD), generalized anxiety disorder, and Posttraumatic Stress Disorder (PTSD). She reported that she used to take Klonopin and Trazodone but was currently "only allowed to take Abilify and Zoloft" due to her recent pregnancy with N.P. Mother also reported that she suffers from insomnia and would take her medication at night along with Tylenol PM.

Mother told the social worker she had forgotten to take her medication the previous night because she was working on a research paper. She had stayed up all night working on the paper, then took her medications in the morning, and settled down for a nap with her children around 9:00 a.m.

Mother said this was the first time D.P. had ever gotten out of her apartment. She admitted D.P. had climbed onto the nightstand underneath her window before, but claimed he had never tried to climb out of the window. She reported that D.P. is extremely energetic and she has a very difficult time controlling him. When the social

worker observed that D.P. appeared to be developmentally delayed, mother replied that she had thought about having him assessed but had not had a chance to do so.

Mother reported that D.P. had never met his biological father, J.C. She said the biological father had been "extremely emotionally abusive" towards her during their relationship. According to mother, D.P. was scheduled to meet his father in two days. When the social worker spoke to the father, he explained that D.P. was the result of a one-night stand and that he did not learn of D.P.'s existence until he was asked to take a DNA test two years ago. Ever since, he had been paying child support ($1,026 a month) and fighting mother for custody, but he was having trouble contacting her. He had hired a private investigator, and every time he located her she would "disappear." D.P.'s biological father was unsure whether mother suffered from any mental health issues "due to the brevity of their relationship."

While at mother's apartment, the social worker performed an informal body check on N.P., mother's four-month-old daughter. N.P. had a "very severe" diaper rash and dried stool pasted to her buttocks. Mother said she had noticed the diaper rash a few days before and had been treating it with over-the-counter medication.

After interviewing mother, the social worker spoke with a neighbor who said he was familiar with mother's family. He reported he had seen D.P. in the window when he left the apartment complex around 9:00 that morning. When he returned at noon, the

screen had been broken and there were toys on the ground outside the window. He had often heard D.P. playing "all hours of the night."

The social worker removed both children from the home and performed full body checks on them. N.P.'s legs were also covered in a rash. N.P. felt "extremely light" and her head "bobble[d] dangerously" when held because she could not support its weight. N.P. drank about 12 ounces of formula in urgency while at the intake center. A normal feeding for a four-month-old infant is approximately six ounces. D.P. appeared to be underweight and developmentally delayed. D.P.'s front teeth were decayed and he expressed discomfort when eating cookies and crackers. While chewing, D.P. cupped his lips over his teeth, in an apparent effort to avoid contact with his front teeth. He ate an "abundance" of food, also with great urgency. The social worker's opinion after the assessment was that both children were neglected.

The following day, Riverside County Regional Medical Center's Child Abuse and Neglect (CAN) Team performed emergency forensic examinations on both children. N.P. weighed only 10 pounds, which fell below the 5th percentile for her age. She had a severe diaper rash, which was likely caused by sitting in her urine for extended periods of time. D.P. weighed 32 pounds and was in the 50-75th percentile for his age. D.P.'s examination report noted he suffered from mild speech delay and dental neglect. His front two teeth were decayed and the report recommended "dental care ASAP." The

report also noted D.P. was unable to chew the cracker given to him with his front teeth and that D.P. appeared to be in pain while chewing.

After the examinations, the CAN Team informed the social worker it had "grave concerns" about the children's development and care. The team believed both children had been "nutritionally neglected."

DPSS filed a petition for both children. As relevant to this appeal, DPSS alleged the children fell within section 300, subdivision (b) because mother: (1) "neglects the health, safety, and well[-]being of the children in that . . . [D.P.] was found wandering the neighborhood for several hours without adult supervision" (the b-1 allegation); (2) "neglects the health, safety, and well[-]being of the children in that the home was found in disarray . . . with an inadequate supply of food for the children [and] . . . [D.P.] was found to have severe tooth decay . . . [and N.P.] has severe diaper rash, and both children appear malnourished" (the b-2 allegation); and (3) "has unresolved mental health issues and is currently limited in her ability to provide the children with a safe and stable home" (the b-5 allegation). The court found DPSS had demonstrated a prima facie showing that the children were at substantial risk of serious physical harm under section 300, subdivision (b) and ordered them detained and placed in foster care.

B. *Post-detention*

After living with a foster family for two months, N.P. gained four pounds, bringing her into the 10th percentile for her age. N.P.'s height also increased from the 10th percentile to the 25th. The CAN Team nurse practitioner who performed the follow-up examination attributed these gains in height and weight to regular feedings by the foster parents. N.P.'s severe diaper rash went away with regular diaper changes and adequate nutrition, and her muscle weakness resolved. Based on N.P.'s initial examination and her progress in foster care, the CAN Team determined N.P. had been neglected and subjected to prolonged deprivation.

D.P. also gained four pounds in foster placement. The foster family reported that he constantly wanted to eat and that he would gorge, instead of chew, his food. The foster father reported that D.P. would wake up every morning and try to get out of the home. He told the social worker he had consulted with mother regarding these attempted escapes and mother had told him D.P. used to behave the same way at her home.

According to the foster father, mother would pay attention only to D.P. during visits and would ignore N.P. The foster parents had to remind mother to change N.P.'s diapers and mother never thought to feed her. Mother often spent time talking or playing games on her phone instead of interacting with the children and attending to their needs. On the other hand, visits with D.P.'s biological father were going very well and the foster father had no concerns.

Mother's case plan required her to complete a parenting program, individual counseling, a psychological evaluation, and a medication evaluation, and to submit letters to the court on various parenting issues. Instead of participating in a psychological evaluation with Dr. Suiter, the court appointed-evaluator, mother hired her own, independent psychiatrist, Dr. Meyer. Dr. Meyer opined that mother's mental health was "within normal limits" and there was no indication her mental health issues would impair her ability to parent.

C. *The Jurisdiction and Disposition Hearings*

The court heard mother's testimony at the jurisdiction hearing on February 6, 2015. Mother testified that she had completed a 10-week parenting course and was halfway done with a 16-week counseling session. She submitted to two drug tests and both were negative. Mother was willing to participate in the evaluation DPSS was requesting with Dr. Suiter, a court-appointed evaluator, even though she believed Dr. Meyer's opinion should be "sufficient." Mother had not yet completed a medication evaluation.

Mother testified that the day after D.P. had escaped from her home, she rescreened the window and installed a childproof clamp. She also installed a chain lock on the door and a sensor. She had planned to go grocery shopping at 10:00 on the morning of the incident, but now her kitchen was well-stocked with food, formula, and breast milk. She

did not agree with the statements of the social worker or the police officer in the reports regarding the incident with D.P.

When asked about D.P.'s tooth decay, mother explained that he had fallen and hurt his tooth several months earlier, in July 2014. Her mother had asked a friend who was a dentist about the tooth, and the dentist said mother could just wait for the tooth to fall out. Mother accepted this advice even though the dentist had not looked at D.P.'s teeth. Mother never took D.P. for a dental examination because she did not have money to do so. D.P. was covered by Medi-Cal and mother never attempted to find out whether his coverage included dental care. She could not explain why she had not looked into obtaining dental care for D.P.

Mother admitted N.P. had previously suffered from a diaper rash which required prescription medication because over-the-counter creams had not been successful. She planned to take N.P. to urgent care for her most recent rash, but could not explain why she had not done so before the incident. She acknowledged that urgent care was open on the weekend and that she could have taken N.P. earlier.

The court questioned mother about her statement to the social worker that she was feeling overwhelmed the day D.P. escaped from her apartment. Mother said she did not remember saying that to the social worker and denied that she had felt overwhelmed. Mother also denied she suffered from depression, anxiety, ADHD, and PTSD and denied she had told the social worker she suffered from these conditions. She also did not

remember telling the police officer that her depression was "debilitating." When the court asked mother why she was taking medication for depression and anxiety if she did not suffer from those conditions, she replied that she does not have the conditions because her medication is "extremely effective" and allows her to "handle everyday change and stress very well."

Before ruling on the petition, the court stated it had read the submitted reports (some of them "several times"), as well as mother's submissions, and "had an opportunity to view [mother's] testimony, watch her affect and her demeanor, [and] the way she responded to questions asked on direct examination and cross." The court sustained all of the allegations against mother and found that the children came within section 300, subdivision (b). Regarding the b-1 allegation, the court found the supporting evidence was "overwhelming" that mother had failed to adequately supervise D.P., observing that mother's behavior "demonstrates to the Court that there's at least criminal negligence involved." Regarding the b-5 allegation about mother's mental health issues and the questions the court had asked mother during her testimony, the court stated: "The dialogue that the Court had with mother wasn't to demonstrate whether or not she has a mental health issue. It was whether the mother acknowledged she had any mental health issues. The mother's responses to the Court not only didn't make any sense, but they almost defied logic. . . . It's obvious the mother did not want to answer the question or accept that she, in fact, has some mental disability which requires her to take the

medication." The court found a nexus between mother's mental health issues and her ability to protect D.P. because her medication caused her to "become unconscious to the point that a [two year old] was able to leave her residence."

The court released D.P. to his biological father's care with family maintenance services. At the disposition hearing on February 11, 2014, the court removed D.P. and N.P. from mother's custody and directed DPSS to provide mother with family reunification services.

II

ANALYSIS

A. *Substantial Evidence Supports the Jurisdictional Findings*

Mother argues there is insufficient evidence to support dependency jurisdiction over D.P. based on her conduct. She does not challenge the court's jurisdiction over N.P., but asks that we exercise our discretion to review the specific jurisdictional findings involving D.P. (i.e., allegations b-1, b-2, and b-5). We conclude that substantial evidence supports all three findings.

When reviewing a challenge to the sufficiency of the evidence supporting a juvenile court's jurisdictional findings, "we determine if substantial evidence, contradicted or uncontradicted, supports them." (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We consider the record as a whole, resolving all conflicts and drawing all reasonable inferences in support of the jurisdictional findings. (*In re Lana S.* (2012) 207

Cal.App.4th 94, 103.) " 'We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts.' " (*Ibid.*) Thus, in order to succeed on appeal, mother must demonstrate there is no evidence of a sufficiently substantial nature to support the juvenile court's jurisdictional findings. (*Ibid*.)

The purpose of section 300 is to provide maximum safety and protection for children who are at risk of being physically or emotionally abused or neglected and "to ensure [their] safety, protection, and physical and emotional well-being." (§ 300.2; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215.) "[T]he court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child." (*In re Christopher R.*, *supra*, at p. 1216.)

1. *The b-1 allegation: Failure to Supervise D.P.*

The record demonstrates that two-year-old D.P. escaped through mother's bedroom window sometime between 9:00 a.m. and noon and that mother did not realize he was missing until she woke up from a nap at about 2:30 p.m. A neighbor found D.P. barefoot in the parking lot near Grand Avenue, trying to open car doors. Mother contends her lapse in supervision was an exceptional circumstance insufficient to establish jurisdiction under section 300, subdivision (b). Relying on *In re J.N.* (2010) 181 Cal.App.4th 1010 and *In re Savannah M*. (2005) 131 Cal.App.4th 1387, mother argues a single past event does not warrant jurisdiction where there is no evidence the child was at risk of future serious physical harm at the time of the jurisdiction hearing.

Mother's attempts to analogize the facts of her case to those in *In re J.N.* and *In re Savannah M*. are unpersuasive. She argues that, just as the parents in those cases, she took full responsibility for her "one-time" failure and took all possible steps to ensure it would not happen again by securing the doors and windows the day after the incident. Contrary to mother's characterizations, the circumstances of her case are more egregious than those in the cases she cites.

In *In re J.N.*, the parents got into an accident while driving under the influence with their three children in the car. (*In re J.N.*, *supra*, 181 Cal.App.4th at p. 1022.) The appellate court concluded jurisdiction was improper because the parents acknowledged their mistake, were remorseful and willing to change, and there was no evidence suggesting they had failed to provide for their children or keep them safe on any other occasion. (*Id.* at pp. 1022-1023, 1026.) Specifically, the court found there was no evidence to suggest the parents had ongoing struggles with substance abuse. (*Id.* at p. 1026.) In *In re Savannah M*., a family friend molested the parents' daughter while he was babysitting her. (*In re Savannah M.*, *supra*, 131 Cal.App.4th at pp. 1390-1391.) The trial court imposed jurisdiction based on its finding that the parents should have suspected the friend might molest their daughter because he had been changing her diaper under strange circumstances while consuming alcohol. (*Id.* at pp. 1395-1396.) The appellate court disagreed the parents had any reason to suspect a family friend would molest their daughter. (*Id.* at pp. 1396-1397.) The court reversed the jurisdictional

finding on the ground there was no evidence the parents would ever let that person babysit their daughter again. (*Id.* at p. 1398.)

The instant case is readily distinguishable from *In re J.N.* and *In re Savannah M.*, where the sole concern over the parents' ability to protect their children resulted from a single incident. Unlike those cases, the court here was concerned not only with mother's failure to supervise D.P. on the morning he escaped from her apartment, but also with her neglect of the children over a sustained period of time. This is not a case where the only issue with mother's ability to parent is a single past event.

Furthermore, we disagree with mother's characterization of D.P.'s escape as a one-time "lapse in judgment." The jurisdiction/disposition report states that when the foster father consulted mother about D.P.'s frequent attempts to escape his house in the morning, mother said he engaged in the same behavior at her home. She also told the social worker D.P. would climb on top of the nightstand that was sitting under the window she left open during her nap. Mother testified that she did not know Abilify would have the side effect of "knock[ing her] out" because she had just started taking the medication about five days before the incident. The court could find mother's statement incredible, however, given that she previously told the social worker she had been taking Abilify and Zoloft since her pregnancy. This evidence reasonably supports a finding that mother knew, or at the very least should have known, it was unsafe to take her medication and a nap in the morning because this was when D.P. was prone to climb on

the nightstand and to escape. We agree with the trial court that mother's failure to supervise D.P. is closer to criminal negligence than a mere lapse in judgment. We therefore affirm the court's ruling sustaining the b-1 allegation.

2. *The b-2 allegation: Neglect of D.P.*

Mother contends the trial court erred in finding the b-2 allegation true because no evidence demonstrated that D.P. suffered severe physical harm based on her neglectful acts. We disagree.

The record contains substantial evidence that mother neglected D.P. The social worker opined that D.P. had been neglected based on his untreated tooth decay, which caused him noticeable pain when eating, as well as his behavior regarding food, such as gorging and eating with great urgency. The CAN Team corroborated this opinion by arriving at its own conclusion that D.P. had suffered from "nutritional" and "dental" neglect. Another indication D.P. had been neglected is that his four-month-old sister, N.P., suffered from obvious neglect, as noted by the social worker and the CAN Team.

In arguing otherwise, mother asserts that D.P. was never determined by the CAN Team to be "clinically underweight" for his age and that D.P.'s discomfort from the tooth decay, "however inappropriate," never rose to the level of serious physical harm. First, we disagree that D.P.'s tooth decay did not rise to the level of serious physical harm. According to the social worker and the CAN Team, D.P. was in noticeable pain when he tried to eat hard foods such as cookies or crackers. He would break food into small

pieces and push them to the back of his mouth, or cup his lips around his front teeth to protect them as he chewed. The CAN Team found D.P.'s tooth decay to be of "immediate concern," and referred him to Loma Linda University Medical Center for treatment. Mother allowed D.P. to remain in this state of discomfort for at least four months, from July 2014 when he fell and broke his front tooth to November 2014 when D.P. was detained. At the time of the jurisdiction hearing, mother could provide no excuse for why she had not looked into whether D.P. even had dental insurance, or whether there were other options for obtaining emergency dental care over those four months.

Regarding D.P.'s weight, mother's argument ignores the purpose of section 300, which is to protect children from the risk of serious physical harm. (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1215.) A court need not wait until a child is considered clinically underweight before taking jurisdiction. Regardless of D.P.'s precise weight at the time of detention, the CAN Team opined that he had been nutritionally neglected. Additionally, mother's apartment was noticeably lacking in food and D.P. appeared to be hungry. After a short time in foster care, D.P. gained four pounds. The mere fact that D.P. was not in as low a weight percentile as his extremely underweight sister when he was detained does not warrant a reversal of the b-2 finding. We affirm the court's ruling.

3. *The b-5 allegation: Unresolved Mental Health Issues*

Sufficient evidence also supports the b-5 allegation that mother had unresolved mental health issues that limited her ability to provide D.P. and N.P. with a safe home. The reason D.P. was able to escape from mother's apartment undetected was because she had been "knocked out" by Abilify, her depression medication. Indeed, mother told both the police officer and the social worker that her depression was "debilitating" when she did not take her medication. This evidence reasonably supports a finding of a nexus between mother's mental health issues and her ability to supervise her children. Despite this nexus, mother refused to admit to the court that she suffered from any mental health issues. It is the province of the trial court to assess witness credibility (see, e.g., *In re Stephanie M.* (1994) 7 Cal.4th 295, 318) and, from this record, the trial court could reasonably find mother was, at best, minimizing her depression and, at worst, attempting to deceive the court. If mother was unwilling to admit she suffered from depression, it was reasonable for the trial court to assume she would also be unwilling to acknowledge the cause of her failure to supervise D.P. and to seek help managing her depression and medication in ways that do not impede her ability to protect her children.

Mother claims the court erred in rejecting her psychiatrist's opinion that her mental health issues were "within normal limits" and in performing its own "lay analysis" of her mental condition. The court did nothing of the sort. Mother's own statements to the social worker and police officer, not any questioning by the court,

contradicted Dr. Meyer's opinion. Mother had already admitted on multiple occasions that she suffered from numerous mental health issues, including a depression disorder that could be debilitating. She had also admitted to taking various prescription medications for some of these conditions. The court was not required to accept Dr. Meyer's opinion if the court found the opinion was not supported by underlying facts. (See, e.g., *In re R.V.* (2015) 61 Cal.4th 181, 216 [juvenile court not required to "defer to" an expert's opinion if the court finds the opinion inadequate]; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329 [juvenile court determines issues of fact and credibility].) Furthermore, as the court explained during its ruling, its questions were not aimed at determining whether mother suffered from any mental health issues but whether she was able to admit that she suffered from any mental health issues.

Mother's own admission to suffering from mental health issues, her prescription medication regime, the role this medication played in D.P.'s escape, and her refusal to admit her mental health issues to the court, support a finding that her mental health issues were by no means resolved at the time of the jurisdiction hearing and placed D.P. at risk of harm. The court could reasonably conclude mother would benefit from services designed to help her balance her depression and her prescription medication with her parenting responsibilities. It could also reasonably conclude that her children were at a substantial risk of serious physical harm until mother obtained such services. We conclude substantial evidence supports the b-5 finding.

B. *Disposition*

We review a court's dispositional order for substantial evidence. (*In re T.V.* (2013) 217 Cal.App.4th 126, 135.) "Before the court may order a child physically removed from his or her parent's custody, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal." (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 135, citing § 361, subd. (c)(1).) A removal order is proper if it is based upon proof of parental inability to provide proper care for the child, as well as proof of potential detriment to the child if he or she remains with the parent. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.)

"The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home." (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 135.) Here, the same evidence supporting jurisdiction also supports removal.

Mother contends the court did not explore any reasonable alternatives to removal. She also asserts D.P. could have remained safely in her home while she participated in services. We disagree. While mother did immediately take several steps towards improvement after detention, such as baby-proofing her home, stocking up on food, and participating in parenting classes and therapeutic counseling, she had yet to complete several aspects of her case plan. These uncompleted aspects included writing letters to the court regarding various parenting issues and participating in a psychological

evaluation with the court-appointed evaluator. Most importantly, mother had not yet completed a medication evaluation. Given that her depression and prescription medication use was the cause of her failure to supervise D.P., the court could reasonably conclude it was not yet safe to return D.P. to her care. Mother's management of her prescription medication is especially troubling given her refusal to admit to the court that she suffered from depression and her insistence that her medication was "extremely effective [such that] I will [be] able to handle everyday change and stress very well." Without a medication evaluation, the court had no information regarding her ability to prevent another escape incident.

We affirm the court's removal order.

III

DISPOSITION

The jurisdiction judgment and disposition order appealed from are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

KING
Acting P. J.

MILLER
J.